IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-323

THEODORE L. ANDERSON and DORA C. ANDERSON,

Petitioners,

vs.

THE CITY OF DE KALB, an Illinois Municipal Corporation, THE SALVATION ARMY, an Illinois Corporation, Doing Business Under the Name of THE RED SHIELD STORE, and UNKNOWN OWNERS,

Respondents.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Second District

BRIEF FOR RESPONDENT CITY OF DE KALB IN OPPOSITION

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TABLE OF CONTENTS

LIST OF AUTHORITIES CITED

Cases

Statutes and Rules

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INTRODUCTION

Petitioners have urged this Court to consider three so-called "federal" questions, but offer no explanation, argument, citation of authorities, or reference to the record to support these supposed questions.

We propose to demonstrate in this brief:

(1) That Petitioners have failed to meet the jurisdictional requirements necessary to a grant of this petition; and

(2) That the decision of the Illinois Appellate Court for the Second District is well considered, and amply supported by the record.

STATEMENT OF THE CASE

This case arises from Respondent City of DeKalb's condemnation of Petitioners' property as part of the City's urban renewal program affecting twelve blocks. (Pet. A. 2) Respondent acquired Petitioners' property under the authority of various ordinances of the city passed under the provisions of Section 11-11-1 of the Illinois Municipal Code. Ch. 24, Ill. Rev. Stat. §11-11-1 (1971) (Pet. A. 3).

The Petition for Condemnation was filed October 12, 1971. On April 14, 1972, Petitioners (defendants below) filed a traverse and a Motion to Dismiss; and on April 28, 1972, filed amendments to the traverse and Motion to Dismiss. (Pet. A. 2) Similarly, Petitioners filed a Motion for Judgment of the pleadings as amended, or for summary judgment. All motions and the traverse were heard and denied on June 1, 1972. (Pet. A. 2) On July 10, 1972, a trial was held and the jury returned a verdict finding just compensation to be Forty-five Thousand Dollars ($45,000.00). Post-trial motions were filed, and properly disposed of by the Trial Court. (Pet. A. 2) Although the disposal of post trial motions normally ends the Trial Court's involvement and

jurisdiction, nevertheless since that time, Petitioners have been before the Trial Court approximately seventeen more times for various amendments and motions prior to the Appellate Court opinion. (Pet. A. 2)

On appeal to the Illinois Appellate Court for the Second District, Petitioners raised several issues, but only argued one. As the Appellate Court observed:

> The pro se brief of the defendant is extremely difficult to follow. Arguments are presented, theoretically, on eight issues in their brief. However, *they argue only one,* that the defendants' property is not "slum or blighted". The defendants conclude that the City of DeKalb lacks the right and power to condemn defendants' real property. At no time do the defendants argue that the amount awarded under the condemnation proceeding is insufficient. The issue of just compensation, therefore, is specifically waived. (emphasis supplied)

(Pet. A. 3) No federal question was properly raised and argued before, or considered by, the Illinois Appellate Court.

Petitioners' Petition for Rehearing before the Appellate Court was denied. (Pet. A. 6) Its Petition for Leave to Appeal before the Illinois Supreme Court was denied (Pet. A. 7), and its Motion for Reconsideration of the order denying the Petition for Leave to Appeal likewise was denied. (Pet. A. 9)

Before this Court, Petitioners apparently raise three points asserting that they are federal questions. First, whether the pleadings in state court violated Petitioners' federal rights (Pet. 3); second, whether Title 42, United States Code, Chapter 8(a), sub-chapter 2, §1460 is applicable, or of any effect whatsoever (Pet. 4); and third, whether Division 74.2 of the Illinois Municipal Code was applicable

rather than Division 11 under which the Respondent City proceeded.

Although Petitioners attempt to raise the above three questions, they fail to brief those questions in their Petition, or to offer any authority, reference to the record, or argument in support of said questions. In fact, their only asserted argument is as follows:

> (g) Present petitioners for certiorari have long contended in both the Circuit and Appellate Courts that because this action is purely statutory and neither Division 11 nor Division 74.2 was followed, even nearly, the Petition for Condemnation failed to confer jurisdiction of the subject matter upon the Circuit Court, and so not on the Appellate Court on appeal.
>
> (h) The above facts constitute argument.

(Pet. 7) Not one case is cited; and not one reference to the record is made.

As the Appellate Court of Illinois twice observed in its opinion:

> The pro se brief of the defendant is extremely difficult to follow.
>
> ••••
>
> As stated at the outset of this opinion, it is extremely difficult to follow the arguments of the defendants.

(Pet. A. 3, 5) Similarly, Petitioner's Petition is difficult to follow. No argument in support of asserted questions is made; no case or statute citations are offered; and no reference to the record is made. To what unknown points of law do Respondents respond?

The burden is on Petitioners to present in their Petition adequate information concerning the record and essential facts. The mere assignment of errors without argument, explanation, reference to the record, or citation of authorities is completely insufficient to comply with this Court's rules, or to invoke this Court's jurisdiction.

ARGUMENT

I. THE PETITION FOR CERTIORARI IS INSUFFICIENT, AND NOT IN COMPLIANCE WITH APPLICABLE SUPREME COURT RULES.

In deciding whether it has jurisdiction in this case, this Court must determine whether a federal question was involved and necessarily passed upon by the State Court. Such determination must rest upon an examination of the record. *Honeyman* v. *Hanan*, 300 U.S. 14, *Appeal Dismissed*, 302 U.S. 375 (1937). The burden is on Petitioners to demonstrate those portions of the record upon which jurisdiction is based. *See*, U.S. Sup. Ct. Rule 23. Because this Court is wary of assuming jurisdiction of a case from State Court unless it is plain that a federal question is necessarily presented, Petitioners must show that this Court has jurisdiction of the case. *Department of Mental Hygiene of California* v. *Kirchner*, 380 U.S. 194 (1965). Any doubt in maintaining Petitioners' burden of establishing this Court's jurisdiction must be resolved against jurisdiction. *Republic Natural Gas Company* v. *State of Oklahoma*, 334 U.S. 62 (1948).

In light of these requirements, Petitioners' Petition for Certiorari is woefully inadequate. Petitioners simply have not met their burden of providing this Court with a sufficient record upon which this Court may rest jurisdiction. An insufficient Petition is reason for denying the Petition. U.S. Sup. Ct. Rule 23(4).

This Court's Rule 23 (d) states that whenever a case allegedly involves a particular statute, Petitioner must set out that statute verbatim either in the text, or in an ap-

pendix. Petitioners raise as a possible federal question the application and effect of Title 42, United States Code, Chapter 8(a), Sub-chapter 2, but nowhere do they include in the brief or appendix the entire text of that statute.

Rule 23(f) of this Court requires the Petitioners to demonstrate how and at what point of the proceedings the federal questions sought to be reviewed were raised; the method of raising them; the way they were passed upon by the lower courts; or pertinent quotations of specific portions of the record, with specific references to the record as will "show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on Writ of Certiorari". Nowhere, however, do Petitioners ever specify the particular stage in the proceedings in the Court of first instance, and in the Appellate Court, where the federal questions it seeks to review were raised. Nowhere do they demonstrate or show the method by which they raised those questions. Nowhere do they state how these questions were passed upon by the Illinois Courts. Nowhere do they provide pertinent quotations of specific portions of the record, or provide specific references where the matters appear. In sum, Petitioners have not complied with Rule 23(f) in showing this Court that a federal question was properly raised so as to give this Court jurisdiction.

Rule 23(h) of this Court requires Petitioners to present "a direct and concise argument amplifying the reasons relied on for the allowance of the writ." Incredibly, Petitioners' entire argument is this:

> (h) The above facts constitute argument.

(Pet. 7) Petitioners cite no authorities or statutes relied upon; offer no explanation for the federal questions they

assert; and offer no quotations from or references to the record below.

Petitioners have the burden of showing this Court that it has jurisdiction. *Dept. of Mental Hygiene of California, supra.* One purpose of Rule 23 is to ensure that Petitioners present their arguments with accuracy, brevity, and clearness. This Petitioners have not done. Rule 23(4) states:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration *will be a sufficient reason for denying his petition.* (emphasis supplied)

Petitioners' Petition is woefully inadequate. It is unclear and it presents nothing to aid this Court to achieve an adequate understanding of the points requiring consideration. Accordingly, this failure alone is sufficient reason for this Court to deny the Petition for Certiorari.

II. NO FEDERAL QUESTION HAS BEEN NECESSARILY PRESENTED.

Petitioners invoke this Court's jurisdiction based upon §1257(3) of the Judicial Code which gives this Court jurisdiction over State Court cases in which any title, right, privilege or immunity is "specially set up or claimed under the Constitution, treaties or statutes of, . . . the United States". 28 U.S.C. §1257. For Section 1257 to be applicable, it is necessary that the federal question was duly raised in the proceedings, *Cardinale* v. *Louisiana,* 369 U.S. 437 (1969); and that the federal question upon which the State Court judgment hinges was substantial. *Zucht* v. *King,* 260 U.S. 174 (1922) It is necessary, moreover, that the federal claim was properly asserted in and rejected by the Illinois

State Court. *Huffman* v. *Pursue, Limited,* 420 U.S. 592, *reh. denied* 421 U.S. 971 (1975).

In the instant case, no federal question was presented, argued, or decided in the courts below. Petitioners cite no example and give no reference, or quotation from the record, demonstrating the proper raising of a federal question. The Illinois Appellate Court concluded that only one argument was actually presented by Petitioners.

> However, they argue only one, that the defendants' property is not "slum or blighted". The defendants conclude that the City of DeKalb lacks the right and power to condemn defendants' real property.

(Pet. A. 3) Thus, the only question before the Appellate Court was whether the fact that property is allegedly not "slum or blighted" is a defense to a condemnation proceeding in an urban renewal project. Because the city proceeded under an Illinois State statute, this question of defense is purely a state question. *Shirley* v. *Louisville and Nashville Railroad Co.,* 327 F.2d 549 (5th Cir. 1964). And that question was determined adversely to the Petitioners by the Illinois Supreme Court in *City of Chicago* v. *Barnes,* 30 Ill.2d 255, 195 N.E.2d 629 (1964), wherein that Court said:

> There is no merit in the contention. In this kind of case the fact that there may be some sound buildings in the slum and blighted area is *no defense* to the proceedings. Property may be taken which, standing by itself, is unoffending, for the test is based on the condition of the area as a whole. (emphasis supplied)

30 Ill.2d at 257. Thus, under Illinois law, the fact that Petitioners' individual property is not slum or blighted is not a defense. It is the area as a whole which is the test.

Even assuming without conceding that this was a federal question, then nevertheless the question is not substantial.

This Court already has rejected this contention of Petitioners in *Berman* v. *Parker,* 348 U.S. 26 (1954), wherein this Court said:

> Property may of course be taken for this redevelopment which, standing by itself, is innocuous and unoffending . . . It is the need of the area as a whole which Congress and its agencies are evaluating. If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrative plans for redevelopment would suffer greatly . . . Community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis—lot by lot, building by building.

348 U.S. at 35. Whether defendants' property is "blighted" or "slum", therefore, is not even relevant. It is the whole redevelopment area which bears scrutiny. Petitioners never perceived this point. It is not a federal constitutional point; it is not a substantial federal question.

Although only one argument was made before the lower Illinois Court, Petitioners now attempt to present three "federal" questions. *First,* Petitioners question whether the pleadings, and the applicable municipal resolutions, fulfill the federal guarantees of substantive and procedural due process, and equal protection. (Pet. 3, 4) In sum, Petitioners are arguing that the pleadings and resolutions were insufficient. Even if they were (and we deny that they were), this again would be purely a matter of state law. The sufficiency of pleadings under state law pursuant to a state statute is a state question. *Duncan* v. *Tennessee,* 405 U.S. 127 (1972) (criminal pleadings). Petitioners had the opportunity to present evidence on the sufficiency of the pleadings, to challenge the authority of the Respondent to condemn the property in question, and to challenge the

Respondent's evidence. As the Appellate Court observed, however:

> The defendants put on no evidence, they merely filed an affidavit stating the defendants' opinions and beliefs. Nowhere in that affidavit is there any allegation that the City of DeKalb is without the authority to condemn. . . It did not present any evidence that the City had abused its discretion.

(Pet. A. 4) Due Process does not guarantee Petitioners victory. It only guarantees them a full and complete hearing. Petitioners had their chance to present evidence before the Illinois trial court, but neglected to do so.

Petitioners also seem to contend that the failure of the City to attach a copy of the municipal resolution to the pleadings, or in any other way identify the "blighted area", deprived them of constitutional rights. (Pet. 4) It is clear, however, that regardless of the sufficiency of the pleadings, the resolution and the identification of the area were presented to Petitioners prior to termination of the merits; and that they had full opportunity to present evidence on the issue. (Pet. A. 4) They chose not to do so, and cannot now convert that omission into a federal question.

Second, Petitioners raise the question of the application and effect of Title 42, United States Code, Chapter 8(a), Sub-chapter 2. Nowhere, however, do Petitioners ever quote where in the record below this statute was raised; where the statute was even mentioned; how the statute is even relevant; or even provide this Court with a full text of the statute. U.S. Sup. Ct. R. 23(f). Respondent City of DeKalb proceeded under a particular division of the Illinois Municipal Code. It did not proceed under Title 42. The relevance of Title 42 is never explained by Petitioners. The burden is on Petitioners to show this Court what relevance

Title 42 has; and how and in what manner it was raised in the State Court proceedings. U.S. Sup. Ct. R. 23(f) Petitioners' failure to do so is fatal. Clearly, no federal question has been raised.

Third, Petitioners contend that division 74.2 of §11 of the Illinois Municipal Code (Ch. 24, Ill. Rev. Stat., §11-74.2) is the applicable statute in the case rather than Division 11 under which the Respondent City of DeKalb proceeded. (Pet. 5) Petitioners admit, however, that they never raised the question until eight days before oral argument before the Appellate Court. (Pet. 5)

Although Division 74.2 was on the books more than four years prior to the date of the condemnation petition was even filed (Pet. 5), Petitioners never raised the issue before the trial court, or briefed it before the Appellate Court. Illinois Supreme Court Rule 341(e) (7) (Ch. 110A, Ill. Rev. Stat. §341) states, in part, that briefs *shall* contain:

> Argument, which shall contain the contentions of Appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on . . . *points not argued are waived* and shall not be raised in the reply brief, in oral argument, or in petition for rehearing. (emphasis supplied)

Petitioners did not properly raise their contention before the Illinois Courts, and as they concede, both the Illinois Appellate Court, and the Illinois Supreme Court, ignored this point. (Pet. 5)

In addition, nowhere in their Petition do Petitioners explain to this Court how Division 74.2 is applicable, and Division 11 not applicable. No argument is made, for example, that Division 74.2 repealed, superseded, amended, or even affected Division 11. Nowhere do Petitioners even con-

tend that Division 11 is inapplicable. This is just another contention raised by Petitioners to which they offer no explanation.

This case involves no substantial federal question. Consequently, this Court has no jurisdiction, and must deny the Petition for Certiorari.

III. THE RECORD OVERWHELMINGLY SUPPORTS THE AFFIRMANCE OF A PURELY STATE COURT ACTION BY THE ILLINOIS APPELLATE COURT.

In its opinion, the Illinois Appellate Court carefully reviewed the evidence presented before the Trial Court. It scrutinized the evidence, observed that Petitioners presented no evidence on the issues of the city's authority, or the necessity for condemnation, (Pet. A. 4), and concluded that Respondent city's case complied with the standards set forth by the Illinois Supreme Court. (Pet. A. 4) Furthermore, it pointed out that Petitioners had waived the issue of just compensation. (Pet. A. 3) It is clear, therefore, that the evidence supports the Trial Court judgment as affirmed by the Illinois Appellate Court.

The question of the city's appropriation of Petitioners' private property for public purposes is one primarily and exclusively for the state to determine. *Madisonville Traction Company* v. *St. Bernard Mining Company,* 196 U.S. 239 (1905). This Court has long recognized that as a general proposition, it is for the state, primarily and exclusively, to:

> Declare for what local public purposes private property within its limits may be taken upon compensation to the owner, as well as to prescribe a mode in which it may be condemned and taken.

Madisonville Traction Company, 196 U.S. at 252. In the instant case, Respondent City of DeKalb condemned Petitioners' property under the authority granted the city by Section 11 of the Illinois Municipal Code. It presented its evidence in compliance with applicable Illinois Supreme Court standards. For whatever the reason, Petitioners introduced no evidence challenging the authority of the city to condemn, or the city's determination that Petitioners' property was necessary for urban renewal purposes.

This Court recognizes that the existence of independent, adequate state grounds is sufficient reason to decline review. *Henry* v. *Mississippi,* 379 U.S. 443 (1965). The Illinois Trial Court and Appellate Court did not decide any federal questions. Instead, they decided a question of eminent domain which is well within traditional and highly orthodox state prerogative.

The tactics and strategy of Petitioners are painfully apparent. Because they failed to convince the State Court, they now for the first time attempt to elevate the state issues to federal constitutional proportions, and even raise a few questions for the first time, in order to obtain still another review. These efforts are neither within the letter nor the spirit of the principles governing Petitions for Writs of Certiorari, and accordingly, this Petition should be dismissed.

CONCLUSION

Petitioners seek to obtain this Court's involvement in an eminent domain question of a local nature, within traditional state government prerogatives, and well within the Illinois State Court's sole jurisdiction. The Petition, however,

fails to reveal the existence of any substantial federal question. Without such a question, this Court has no jurisdiction. The Petition, moreover, is woefully inadequate. This Court has been given no reason to issue the Writ.

Petitioners have received a fair trial and meticulous appellate consideration of their appeal. Respondent City of DeKalb urges this Court, therefore, to dismiss the Petition for lack of jurisdiction, or in the alternative, to dismiss the Petition.

Respectfully submitted,

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